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What's Wrong With a National Popular Vote (NPV)?

That is a quote from a December 2008 *Wall Street Journal* op-ed piece written by Jonathan Soros, son of globalist financier George Soros. In the article, Soros insists that the election of the President by the method established by the Constitution of 1787 is "antidemocratic by design."

The younger Soros is right, but for the wrong reason. The prevailing spirit of the Constitution is antidemocratic and is so by the very deliberate and express design of the framers thereof.

Witness the response by the Nestor of the Convention, Benjamin Franklin, to an inquiry made by a passerby as he left the State House in Philadelphia. As the story is told, a young woman approached the renowned scientist and diplomat and asked, "Well, Dr. Franklin, what have you done for us?" Franklin responded soberly, "My dear lady, we have given to you a republic — if you can keep it."

Dr. Franklin was speaking the truth. Article IV, Section 4 of the document he helped craft over that hot summer mandates that "the United States shall guarantee to every State in this Union a Republican Form of Government."

As to the preferability of a republic (a government of law) over a democracy, we may turn to the reliable words of the man known to history as the "Father of the Constitution," James Madison, who preferred a republic. In *The Federalist*, No. 10, Madison wrote that a republic is able to "refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations." But "democracies," he said, based on his study of history, "have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths."

A very vital aspect of the republican frame upon which our federal government is built is the so-called Electoral College.

Article II, Section 1 of the Constitution sets forth the manner by which the President is to be chosen: "Each State shall appoint, in such manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress." The remaining instructions for presidential elections given in Article II were altered by the 12th Amendment. In relevant portion, that amendment reads: "The Electors shall meet in their

respective states and vote by ballot for President and Vice-President.… The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed."

A simple formula: States appoint electors; electors cast votes for President (and Vice President); the candidate receiving the most votes wins (provided it be a majority of the total number of votes cast by the electors). Not only that, but the electors would actually deliberate on who the best candidate would be before casting their votes. This is of course a far cry from what the Electoral College has become in practice, where the entire delegation of electors for a particular state is expected to vote as a block for whoever wins the popular vote for President in that state.

Despite the simplicity of the system originally intended by the Founding Fathers, however, there are those, such as the aforementioned Jonathan Soros, who are not impressed, and they do not share the Founders' fear of the insinuation of democracy into the government of the United States. These opponents of the Electoral College prefer a more democratic method of electing the President.

In fact, there is a measure wending its way through state legislatures that would scrap the Electoral College in all but name and convert the election of the President of the United States into a purely democratic process. This effort is known as the National Popular Vote (NPV) compact.

The NPV Compact

Despite minor differences in the various NPV bills, there are a few aspects common to all of them. First, a member state shall hold presidential elections by statewide popular vote. Second, the chief election official of the state is required to certify the results of the election and report the final vote tally to his colleagues in the other members of the compact. Third, an official shall determine the "national popular vote totals" for each candidate in each state (even those not participating in the scheme). Finally, the electoral votes of each signatory state are awarded to the candidate who wins the popular vote count.

The compact specifies that it shall take effect only after enactment of NPV legislation has occurred in states with a combined number of electoral votes equal to a controlling majority (currently 270). Should this occur, it would mean that whoever wins the national popular vote would become President.

In a document entitled "Every Vote Equal," published by National Popular Vote, Inc., the authors proclaim their supposed plan for dealing with the Electoral College:

> The Electoral College would remain intact under the proposed compact. The compact would simply change the Electoral College from an institution that reflects the voters' state-by-state choices (or, in the case of Maine and Nebraska, district-wide choices) into a body that reflects the voters' nationwide choice. Specifically, the proposed compact would require that each member state award its electoral votes to the presidential candidate who received the largest number of popular votes in all 50 states and the District of Columbia.

Despite these well-worded assurances, however, should the NPV compact become the method by which the President is elected, the Electoral College will effectively be dead. Although, strictly speaking, the Electoral College would remain intact, it would exist in name only. Its republican, anti-democratic essence would be removed, and it would be left as a mere Potemkin structure. That is to say, it would maintain the appearance of constitutional republicanism, but be bereft of any such workings and as such unable to provide any of the protections against tyranny for which it was originally designed.

Put simply, the National Popular Vote initiative would radically alter the constitutional process for

picking a President and would do so without following the method provided in the Constitution for changing that document.

This insidious plot would be frightening enough were it merely the academic musings of some apparatchik in a think tank or university. Unfortunately, there is a substantial thrust behind passage of an interstate compact wherein the signatories would covenant to abide by the letter and spirit of the National Popular Vote plan.

Originators of the NPV insist that the compact would be legal without congressional approval. The Every Vote Equal organization points to a Supreme Court decision handed down in 1893 in the case of *Virginia v. Tennessee*, which declares that congressional consent is only necessary when an agreement threatens federal supremacy. However, this decision trumps the plain language of Article I, Section 10 of the Constitution, which clearly states: "No State shall, without the Consent of Congress … enter into any Agreement or Compact with another State."

Remarkably, there has been noticeable progress on the state level toward passage of one or another version of the NPV Interstate Compact (NPVIC).

In 2007, NPVIC legislation was introduced in 42 of the 50 state legislatures. It was passed by one or more of the legislative bodies in Arkansas, California, Colorado, Hawaii (where the Governor vetoed it), Illinois, New Jersey, and North Carolina. The same year, Maryland became the first state to enter the compact after its state legislature passed the NPVIC bill and Governor Martin O'Malley signed it into law. In 2008, New Jersey became the second signatory to the agreement when Governor John Corzine signed the measure into law on January 13 of that year.

Maryland and New Jersey were quickly joined by Illinois, Hawaii (after the legislature overrode a second veto), Washington, Massachusetts, Vermont, and the electorally rich state of California. The District of Columbia entered the compact last year when the Mayor signed the NPVIC bill sent to him by the 13-member City Council.

Presently, the number of participants in the compact sits at eight states (and Washington, D.C.). However, that number may soon increase, as NPVIC measures have been introduced in all of the remaining 50 states.

Constitutional Considerations

Constitutionalists will at once recognize problems in the NPVIC. First, let us consider the historical issues. That is to say, any democratization of the presidential election process is an affront to the express intent of the Founders. The men who constructed our federal government zealously guarded against permitting the harmful influence of democracy to infect the inner workings of our nation. In the case of the Electoral College, the Founders intended the body of electors to be a deliberative convention of wise men brought together for the sole purpose of soberly choosing a President from among the available candidates.

In *The Federalist*, No. 68, Alexander Hamilton explained how the method chosen by him and his colleagues of electing the President was still influenced by the will of the people.

> It was desirable, that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

Regarding the decision to rely on such a body to make such an important decision, Hamilton wrote:

> It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favourable to deliberation, and to a judicious combination of all the reasons and inducements that were proper to govern their choice. A small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation.
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> It was peculiarly desirable, to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of government. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief.

If the NPVIC continues along its current trajectory, these precautions so "happily concerted" in our Constitution will be eliminated, along with the securities provided thereby to the mischief of democracy.

There is another historical issue at hand. The Electoral College is part of an impressive federal arrangement invented by our Founding Fathers. The government established by them in the Constitution created a federal government with few and defined powers, while leaving the bulk of governing power in the hands of the sovereign states and the people. (As described elegantly in the 10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.")

Furthermore, the states, themselves, were to be represented in the new federal government through a balanced bicameral congress composed of one house representing the people (the House of Representatives, where members are chosen according to population) and one house representing the states (the Senate, whose membership is divided equally among the states regardless of size). This intricate system was the result of a compromise known to history as the Connecticut Compromise, wherein the feud between populous states and smaller states was settled by giving to each a means of being represented equally in the legislative branch.

The relationship between the balancing of state interests in Congress and the design of the Electoral College was succinctly and superbly described by John Ryder, a member of the Republican National Committee from the state of Tennessee. In an article published in the *Washington Times* entitled "Popular Presidential Vote Subverts Constitution," Ryder wrote:

> The Electoral College mirrors this arrangement by giving each state electoral votes equal to its membership in the House plus its two Senators. Thus, California gets 55 electoral votes because of its large population, but no state, even Delaware, has fewer than three electoral votes. It reflects the Founders' compromise between large states and small states and between electing the president by Congress and electing the president directly by the people.

Bypassing the Electoral College through the proposed compact undermines that balance by effectually erasing states' boundaries along with those states' sovereignty.

If each state instead possessed a number of electoral votes equal only to the size of its delegation in the House, then California would have 53 electoral votes instead of 55 and Delaware would have one electoral vote instead of three. But the design conceived by the Founders skews representation in the Electoral College to the benefit of the smaller states, which like the larger states, are sovereign in their own spheres.

As the situation stands today, a successful candidate is required to build a coalition of electoral support from across the country. The frequent trips to Iowa, New Hampshire, and other less populous states witness this campaign reality. To be elected, a candidate cannot simply woo voters in urban areas while ignoring those citizens living between the two coastal megalopolises.

Should the National Popular Vote measure become the de facto law of the land, a candidate could simply spend time, money, and attention on the large cities in order to ensure garnering a plurality of votes on election day. As further explained by Ryder: "Under such an arrangement, presidential candidates would have no incentive to campaign anywhere except the major media markets in a few states. The country would, in essence, cede our presidential elections to the largest metropolitan areas, whose concerns are different from those of other areas of the country."

Then, there is the issue of voter fraud. In recent years, voter fraud has become a legitimate worry in many elections, including those for President. NPVIC would have the effect of rewarding voter fraud in large cities because every vote cast in such densely populated areas would be exponentially more valuable under the terms of the compact. As the situation stands today, however, fraudulently cast votes have an impact only on the outcome of the election in which it is illegally cast, leaving the elections in sister states wholly untainted. This would not be the case under NPV, as the popular vote is the sine qua non of who is chosen to occupy the Oval Office.

Our Constitution erects barriers around the states protecting them from usurpations on the part of federal authority and from the tyranny posed to them by coalitions of other states that would rob them of their sovereignty and effectual representation in the federal government. These barriers are under attack from the NPV and its advocates. Our nation is a republic, if we can keep it, and one way to avoid losing it is to reject the National Popular Vote initiatives when they are presented to us and to encourage our state legislators to do likewise.